IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 196 OF 2006

Riddhi Siddhi Apartment
Cooperative Hsg. Soc. Ltd. ... Petitioners

Versus

The Municipal Corporation of
Gr. Mumbai and Ors. ... Respondents

Mr. A.C. Singh i/by D.R. Shah for Petitioner.

Mrs. S. Ajitkumar for Respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATED : MARCH 13, 2006

P.C.

. It is the case of the Petitioners who are cooperative society that because of the Respondent No. 5 who is defaulter, the entire building ought not to have been attached as there is power in the corporation considering Section 209A to serve independently notice on the defaulter tenant members of the society.

. We have considered Section 209A of the Mumbai Municipal Corporation Act, 1888. Under the said

section, the primary responsibility to pay dues is that of the Cooperative housing society. Apart from that it is also open to the Commissioner in the event any amount remains unpaid to serve bill on each of the tenant member of the society for such portion of the sum due as bears to the whole amount due the same ratio which the rent estimated under Setion 154 in respect of his tenement bears to the aggregate amount of estimated rent for the whole property. Relying on these provisions, the learned counsel submits that in respect of the defaulting members, it is the corporation which ought to serve notice to the individual members.

. Though the society has been formed, notice has been issued in the name of Gordhandas Bhagwandas Narotamdas, D.H. Vora, B.K. Mehta, H.M. Desai, K.D. Vora as trustees of Seth Bhagwandas Narottamdas Kapole. Prima facie therefore, it appears that the property has not yet been assigned by sale deed in favour of the Petitioner society. Be that as it may.

. The question is that on proper construction of

Section 209A, the power conferred on the Commissioner to serve bill on on each of the tenant-members of the society, is not that he "shall" but that he "may". The primary duty to pay the taxes is on the owner of the property, the society. If there is any defaulter, it is for the society to recover from such member or to take such steps against the member. The Corporation in such matters cannot be expected considering the large number of building in the city to serve individual notices to tenant members, which will only result in the tax payers having to bear a heavier burden of maintaining one more department for issuing such notice. That power, perhaps can be used sparingly on the facts and circumstances of the case. We are satisfied that there is no infirmity with the order passed nor does Section 209A make it mandatory for the Commissioner to serve notice on the defaulting member. In the light of that, no interference is called for. Petition rejected.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)